

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Initially, on page 2 of the Office Action, the Examiner requires that the International application PCT/JP05/01454 be referred to in the first sentence of the specification or in an application data sheet.

However, according to MPEP 1893.03(c), a benefit claim under 35 U.S.C. §120 "is inappropriate"; and accordingly, "it is not necessary for the applicant to amend the first sentence(s) of the specification to reference the International application number that was used to identify the application during International processing of the application... ." (See the paragraph bridging the columns of MPEP page 1800-208)

The claims have been amended, in response to the rejection under the first paragraph of 35 U.S.C. §112, to delete reference to the "solvate", as a result of which this rejection has been rendered moot.

Claims 11-21 have been cancelled without prejudice or disclaimer.

The rejection of claims 1-10 under 35 U.S.C. §102(a) as being anticipated by Murai (WO '693), as well as the rejection of claims 1-21 under 35 U.S.C. §103(a) as being obvious over this reference, are respectfully traversed.

The effective date of WO '693 as prior art is its publication date of March 25, 2004, which is between the filing dates of Applicants' Japanese priority application (2004-027849 filed February 4, 2004) and the PCT application on which the present US application is based (February 2, 2005). Therefore, Applicants can overcome the use of WO '693 as prior art by obtaining the benefit of the Japanese priority application. For this purpose, please see the attached verified English translation of the Japanese priority application.

In view of these considerations, Applicants take the position that the WO '693 reference is not available as prior art against the present invention, and therefore, the rejections of the claims under 35 U.S.C. §102(a) and 35 U.S.C. §103(a) based on this reference should be withdrawn.


The Examiner has also rejected claims 1-21 for obviousness-type double patenting as being unpatentable over claims 1, 4 and 7-12 of USP 7,358,249. As noted by the Examiner, this

rejection can be overcome by filing a Terminal Disclaimer. The Terminal Disclaimer is enclosed.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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